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**BEFORE THE
BOARD OF REGISTERED NURSING
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

MICHAEL JOSEPH HERMANN
60 Stephanie Drive #C206
Salinas, CA 93901
and
27622 Jefferson Ave #320
Temecula, CA 92590-2623

Registered Nurse License No. 603826

RESPONDENT

Case No. 2012-369

DEFAULT DECISION AND ORDER

[Gov. Code, §11520]

FINDINGS OF FACT

1. On or about December 15, 2011, Complainant Louise R. Bailey, M.Ed.,RN, in her official capacity as the Executive Officer of the Board of Registered Nursing, Department of Consumer Affairs, filed Accusation No. 2012-369 against Michael Joseph Hermann (Respondent) before the Board of Registered Nursing. (Accusation attached as Exhibit A.)

2. On or about August 7, 2002, the Board of Registered Nursing (Board) issued Registered Nurse License No. 603826 to Respondent. The Registered Nurse License was in full force and effect at all times relevant to the charges brought herein and will expire on March 31, 2012, unless renewed.

3. On or about December 15, 2011, Respondent was served by Certified and First Class Mail copies of the Accusation No. 2012-369, Statement to Respondent, Notice of Defense, Request for Discovery, and Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record which, pursuant to Business and Professions Code section 136 and Title 16, California Code of Regulation, section 1409.1, is required to be reported and maintained with the Board, which was and is:

60 Stephanie Drive #C206
Salinas, CA 93901.

1 4. Service of the Accusation was effective as a matter of law under the provisions of
2 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
3 124.

4 5. On or about December 20, 2012, Certified and First Class Mail documents were
5 returned by U.S. Postal Service with a forwarding address of 27622 Jefferson Ave # 320,
6 Temecula, CA 92590-2623. Documents were re-served to the forwarding address on January 4,
7 2012 and was again returned by U.S. Postal Service on January 12, 2012 marked "Not
8 Deliverable as Addressed, Unable to Forward". The address on the documents was the same as
9 the address on file with the Board. Respondent failed to maintain an updated address with the
10 Board and the Board has made attempts to serve the Respondent at the address on file.
11 Respondent has not made himself available for service and therefore, has not availed himself of
12 his right to file a notice of defense and appear at hearing.

13 6. Business and Professions Code section 2764 states:

14 The lapsing or suspension of a license by operation of law or by order or decision of
15 the board or a court of law, or the voluntary surrender of a license by a licentiate shall not deprive
16 the board of jurisdiction to proceed with an investigation of or action or disciplinary proceeding
17 against such license, or to render a decision suspending or revoking such license.

18 7. Government Code section 11506 states, in pertinent part:

19 (c) The respondent shall be entitled to a hearing on the merits if the respondent files a
20 notice of defense, and the notice shall be deemed a specific denial of all parts of the accusation
21 not expressly admitted. Failure to file a notice of defense shall constitute a waiver of respondent's
22 right to a hearing, but the agency in its discretion may nevertheless grant a hearing.

23 8. Respondent failed to file a Notice of Defense within 15 days after service of
24 the Accusation upon her, and therefore waived his right to a hearing on the merits of Accusation
25 No. 2012-369.

26 9. California Government Code section 11520 states, in pertinent part:

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1 (a) If the respondent either fails to file a notice of defense or to appear at the hearing, the
2 agency may take action based upon the respondent's express admissions or upon other evidence
3 and affidavits may be used as evidence without any notice to respondent.

4 10. Pursuant to its authority under Government Code section 11520, the Board after
5 having reviewed the proof of service dated December 15, 2011, signed by Kami Pratab, and the
6 returned envelopes find Respondent is in default. The Board will take action without further
7 hearing and, based on Accusation No. 2012-369 and the documents contained in Default Decision
8 Investigatory Evidence Packet in this matter which includes:

9 Exhibit 1: Pleadings offered for jurisdictional purposes; Accusation No. 2012-369,
10 Statement to Respondent, Notice of Defense (two blank copies), Request
11 for Discovery and Discovery Statutes (Government Code sections
12 11507.5, 11507.6 and 11507.7), proof of service; and if applicable, mail
13 receipt or copy of returned mail envelopes;

14 Exhibit 2: License History Certification for Michael Joseph Hermann, Registered
15 Nurse License No. 603826;

16 Exhibit 3: Arrest Records of Michael Joseph Hermann;

17 Exhibit 4: Affidavit of Kami Pratab;

18 Exhibit 5: Declaration of costs by Office of the Attorney General for prosecution of
19 Case No. 2012-369.

20 The Board finds that the charges and allegations in Accusation No. 2012-369 are separately and
21 severally true and correct by clear and convincing evidence.

22 11. Taking official notice of Certification of Board Costs and the Declaration of Costs by
23 the Office of the Attorney General contained in the Default Decision Investigatory Evidence
24 Packet, pursuant to the Business and Professions Code section 125.3, it is hereby determined that
25 the reasonable costs for Investigation and Enforcement in connection with the Accusation are
26 \$1,125.00 as of February 9, 2012.

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DETERMINATION OF ISSUES

1. Based on the foregoing findings of fact, Respondent Michael Joseph Hermann has subjected his following license(s) to discipline:

a. Registered Nurse License No. 603826

2. The agency has jurisdiction to adjudicate this case by default.

3. The Board of Registered Nursing is authorized to revoke Respondent's license(s) based upon the following violations alleged in the Accusation, which are supported by the evidence contained in the Default Decision Investigatory Evidence Packet in this case.

a. Violation of Business and Professions Code section 2761(a) - Unprofessional Conduct.

b. Violation of Business and Professions Code section 2762(a) - Obtaining or possessing controlled substances without a prescription.

c. Violation of Business and Professions Code section 2762(b) - Use of controlled substance or alcohol to an extent or in a manner dangerous or injurious to oneself and others.

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ORDER

IT IS SO ORDERED that Registered Nurse License No. 603826, heretofore issued to Respondent Michael Joseph Hermann, is revoked.

Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

This Decision shall become effective on August 17, 2012.

It is so ORDERED July 18, 2012



Board of Registered Nursing
Department of Consumer Affairs
State of California

Attachment:

Exhibit A: Accusation No. 2012-369

Exhibit A

Accusation No. 2012-369

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
JONATHAN D. COOPER
3 Deputy Attorney General
State Bar No. 141461
4 455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
5 Telephone: (415) 703-1404
Fax: (415) 703-5480
6 *Attorneys for Complainant*

7 **BEFORE THE**
8 **BOARD OF REGISTERED NURSING**
9 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

10 In the Matter of the Accusation Against:

Case No. *2012 - 369*

11 **MICHAEL JOSEPH HERMANN**
60 Stephanie Drive, #C206
12 Salinas, CA 93901

A C C U S A T I O N

13 **Registered Nurse License No. 603826**

14 Respondent.

15 Complainant alleges:

16 **PARTIES**

17 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
18 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
19 Consumer Affairs.

20 2. On or about August 7, 2002, the Board of Registered Nursing issued Registered
21 Nurse License Number 603826 to Michael Joseph Hermann (Respondent). The Registered Nurse
22 License was in full force and effect at all times relevant to the charges brought herein and will
23 expire on March 31, 2012, unless renewed.

24 **JURISDICTION**

25 3. This Accusation is brought before the Board of Registered Nursing (Board),
26 Department of Consumer Affairs, under the authority of the following laws. All section
27 references are to the Business and Professions Code unless otherwise indicated.
28

1 4. Section **2750** of the Business and Professions Code (Code) provides, in pertinent part,
2 that the Board may discipline any licensee, including a licensee holding a temporary or an
3 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
4 Nursing Practice Act.

5 5. Section **2764** of the Code provides, in pertinent part, that the expiration of a license
6 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
7 licensee or to render a decision imposing discipline on the license. Under section 2811(b) of the
8 Code, the Board may renew an expired license at any time within eight years after the expiration.

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10 **STATUTORY AND REGULATORY PROVISIONS**

11 6. Section **2761(a)** of the Code states, in pertinent part, that the Board may take
12 disciplinary action against a certified or licensed nurse, or deny an application for a certificate or
13 license, for unprofessional conduct.

14 7. Section **2762** of the Code states, in pertinent part:

15 In addition to other acts constituting unprofessional conduct within the meaning of this
16 chapter it is unprofessional conduct for a person licensed under this chapter to do any of the
17 following:

18 (a) Obtain or possess in violation of law, or prescribe, or except as directed by a licensed
19 physician and surgeon, dentist, or podiatrist administer to himself or herself, or furnish or
20 administer to another, any controlled substance as defined in Division 10 (commencing with
21 Section 11000) of the Health and Safety Code or any dangerous drug or dangerous device as
22 defined in Section 4022.

23 (b) Use any controlled substance as defined in Division 10 (commencing with Section
24 11000) of the Health and Safety Code, or any dangerous drug or dangerous device as defined in
25 Section 4022, or alcoholic beverages, to an extent or in a manner dangerous or injurious to
26 himself or herself, any other person, or the public or to the extent that such use impairs his or her
27 ability to conduct with safety to the public the practice authorized by his or her license.

28 ...

1 **COST RECOVERY**

2 8. Section **125.3** of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 **CAUSE FOR DISCIPLINE**

7 (Unlawful Possession and Use of Drugs and Dangerous Device)

8 9. Respondent is subject to disciplinary action under Code section 2761, subsection (a),
9 and under Code section 2762, subsections (a) and (b), in that he unlawfully obtained and
10 possessed methamphetamine and a syringe, a dangerous drug/controlled substance and a
11 dangerous device, and/or used methamphetamine to an extent or in a manner dangerous or
12 injurious to himself, any other person, or the public or to the extent that such use impaired his
13 ability to conduct with safety to the public the practice authorized by his license. The
14 circumstances are as follows:

15 10. On or about October 9, 2010, in Monterey, California, Respondent was arrested after
16 being found, in a public place, to be under the influence of a controlled substance, in violation of
17 California Health and Safety Code section 11550.

18 11. On or about May 26, 2011, in Santa Barbara, California, Respondent was arrested
19 after being found, in a public place, to be in possession of methamphetamine, in violation of
20 California Health and Safety Code section 11377, and a hypodermic syringe, in violation of
21 California Business and Professions Code section 4140. At the time of Respondent's arrest
22 Respondent was under the influence of methamphetamine, in violation of California Health and
23 Safety Code section 11550. The arresting officer was required to prevent Respondent from
24 driving Respondent's car, as Respondent was too impaired to drive. Respondent was also in
25 possession of confidential patient information regarding patients of Santa Barbara Cottage
26 Hospital.

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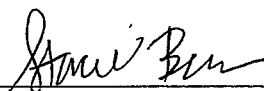
PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 603826, issued to Michael Joseph Hermann;

2. Ordering Respondent to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: December 15, 2011 
for LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant